inconvenient if the sub-tenant can without the consent of the sub-lessor assign his sub-tenancy.

The result is that the plaintiff is entitled to the relief claimed. He is not debarred by Section 13 of the Control of Rent Ordinance, 1948 (Malayan Union No. 6/1948) because Lian Ewe Pit has divested himself of his interest and the defendants were mere trespassers.

I therefore give judgment for the plaintiff :—

(i) in terms of Prayer (a),

(ii) for vacant possession as from 30th November, 1948,

(iii) payment of mesne profits at the rate of $30 per month from 1st April, 1948 till date of vacating the premises,

(iv) costs.

Judgment for the plaintiff.

PUBLIC PROSECUTOR v. MOHAMED BIN ABDUL JABBAR.

[O. Cr. J. (Laville J.) November 6, 1948]

[Johore Bahru — Criminal Case No. 13 of 1948]

Penal Code, s. 409 — Criminal breach of trust — Doctrine of criminal negligence — Gross carelessness alone not evidence of dishonesty.

In this case the accused was charged with criminal breach of trust of cash entrusted to him in his capacity as Johore Records Officer. The only evidence the prosecution produced of misappropriation or misuse of the sum was the fact that the sum was not in the accused's safe, when it was examined.

Held: it is essential before criminality can attach to the non-accounting of sums entrusted to a Government servant that there should be some evidence leading to the unmistakable inference that the non-accounting covered a deliberate misappropriation by the trustee and as there was no such evidence in this case the accused must be acquitted.

CRIMINAL TRIAL.

W. M. McCall (D. P. P.) for the Public Prosecutor.

S. C. McIntyre for the accused.

Laville J. : — The prosecution evidence has proved, and it is not denied by the accused, that of the sum of $1,561,525.38 entrusted to him in his capacity of Johore Records Officer, that is a Government Servant, during the months of October, 1946 to March 1947, both inclusive, he has failed to account for the expenditure of $12,292.91 from that sum and has failed to produce cash to that extent which should have been in his safe at the close of business on 31st March, 1947.

The accused has offered no precise explanation of what has happened to this sum.

In order to secure a conviction it is incumbent on the prosecution to prove that accused has dishonestly misappropriated it or converted it to his own use, or disposed of it in an illegal way, or has wilfully suffered any other person to do so.

The only evidence the prosecution have produced of misappropriation or misuse of the sum is the fact that it was not in accused's safe on 31st March, 1947. From this they ask the Court to infer that accused has misappropriated it for his own use. It is urged that he alone could have done so because he had in general the handling of the money and kept the key of the safe.

It is conceded by the prosecution that accused was a man with very little, if any, experience of accounts or accounting, and that he relied on his clerk Mustaffa till the end of November, 1946, and later on another accounts clerk for this branch of the work.

It is also conceded by the prosecution that the cash book of the accused's office, though kept in a confused and haphazard way yet was accurate as far as it could be and was checked and that there have been no false entries or omissions which would be evidence of dishonest intention on his part. There is also no doubt that accused gave every help in investigating the accounts and at no time objected to or tried to avoid an audit of the accounts of his office.

It has been revealed that there were opportunities for members of his office staff during this period to abstract packets of notes either in single packets or otherwise, and there was a possibility that a duplicate key to the safe in which he kept the money may have been made and used since the safe was not kept in the same office as that in which accused worked.

As to whether accused allowed others to misappropriate the money in his charge, in order to implicate him the prosecution must prove that he did so wilfully, that is intentionally and to an extent that amounts to abetment. There is no reliable evidence that any

persons misappropriated this money and no evidence that accused wilfully suffered them to do so.

There is no doubt that a great deal of the responsibility for what has happened in this office must be borne by the persons appointing the accused to it. He is a man of military training with very little experience of handling or accounting for big sums of money, and seems to have been appointed to the office on the ground that he was the only Malay military officer available, though it is difficult to see why the work could not have been done by a competent accountant.

The checks on the handling of money in the office and on the accounting appear to have been non-existent. No record was kept of what actual money there was in the safe day by day nor was any unpaid balances placed therein docketed with the reference of the acquittance rolls they were meant to cover. There appears also to have been no Treasury supervision by means of surprise surveys of the monies held by the Johore Records Officer.

It is essential before criminality can attach to the non-accounting of sums entrusted to a Government servant that there should be some evidence leading to the unmistakable inference that the non-accounting covered a deliberate misappropriation by the trustee. The doctrine of criminal negligence has not, as far as I have been able to discover, ever been applied to a negligence which has resulted in the loss of trust money by a person entrusted with it or its misappropriation by others through his negligence. I am therefore in this case compelled to hold that, though the accused was grossly careless in the handling of this money and the administration of his office, I cannot find evidence that he was dishonest therein to the extent of misappropriating the money or that he wilfully suffered others to do so.

I am strongly of opinion that this is a matter which should be investigated further under the provisions of the Government's General Orders and that the accused if found to have been at fault in the light of those investigations should suffer the punishments set down therein.

I therefore acquit the accused of the charge of this criminal breach of trust.

Accused acquitted.

SINNATHAMBY v. PUBLIC PROSECUTOR.

[A. Cr. J. (Thomson J.) November 10, 1948]

[Ipoh — Criminal Appeal No. 79 of 1948]

Penal Code, s. 408 — Criminal breach of trust a servant —Meaning of "entrusted."

The appellant in this case was an employee of the Public Works Department. He was convicted of criminal breach of trust of stone from a P.W.D. quarry. One of the grounds of appeal was that there was no evidence that the appellant was in fact entrusted with any sort of dominion over the stone.

Held: s. 408 of the Penal Code applies not merely in cases where the exercise of possession of dominion over property is one of the legal incidents of the contract of service but in every case where by virtue of the existence of the contract of service the accused person is in fact in a position to exercise dominion.

MAGISTRATE'S CRIMINAL APPEAL.

M. S. Mahendran for the appellant.

C. H. Whitton (Solicitor-General) for the respondent.

Thomson J. : — The appellant in this case was charged in the Court of the District Judge at Parit Buntar with criminal breach of trust in contravention of section 408 of the Penal Code. There were also two alternative charges against him with which this Court is not concerned. On the first charge he was found guilty and sentenced to three months r.i. and a fine of $500, with an additional three months r.i. in default of payment. It is against that conviction and sentence he now appeals.

Briefly, the facts alleged by the prosecution and which the learned District Judge found to have been proved were, first, that the accused was an employee of the Public Works Department at Bagan Serai and as such was entrusted with dominion over stone from the Public Works Department Quarry at Semmangol, and, second, that on the 20th of April, 1948, while so employed, he caused about three cubic yards of 1½" stone from Semmangol Quarry to be deposited in a spot from which it was later removed on behalf of a Chinese contractor from whom he had received a sum of $10.

The appeal is based on the ground that the decision of the learned District Judge was against the weight of the evidence, and in this connection it was argued, firstly, that the evidence as to the identity of the stone was unsatisfactory, secondly, that there was